

**COMMONWEALTH OF KENTUCKY  
KENTUCKY BOARD OF TAX APPEALS  
FILE NOS. K13-S-12, K13-S-13 AND K14-S-61, K14-S-62**

**WAL-MART REAL ESTATE BUSINESS TRUST**

**APPELLANT**

**V.**

**ORDER NO.K-24793**

**CAMPBELL COUNTY PVA**

**APPELLEE**

The full Board conducted an evidentiary hearing in these consolidated appeals on January 27, 2014. The parties waived the filing of post-hearing briefs. The Board, having reviewed the record, enters the following findings of fact and conclusions of law.

**BACKGROUND**

This case involves appeals by the taxpayer from the decisions of the Campbell County Local Board of Assessment Appeals for the 2013 and 2014 tax years. The main property in question is a Walmart supercenter store and approximately 28 acres of land located at 6711 Alexandria Pike, Alexandria Kentucky. There is also a one acre unimproved lot at issue which is located at 6705 Alexandria Pike. The PVA assessed the supercenter store and its acreage for \$12,530,000 for each year and the lot for \$522,936.00, for each year. The local board lowered this lot assessment to \$368,000 each year and the PVA failed to take a cross-appeal from those rulings. For purposes of the hearing, the PVA was bound by the local board's value for the one acre lot.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Under Kentucky law, a PVA's assessment is entitled to a finding of prima facie validity, so long as the method employed to assess the property is fairly designed for the purpose of reaching and reasonably tends to reach an approximation of the fair voluntary sales price.

Fayette County Board of Supr's v. O'Rear, 275 S.W.2d 577 (Ky. 1954). This Board previously heard appeals for these properties for the 2011 and 2012 tax years and ruled in the PVA's favor on the basis that the taxpayer had failed to meet his burden of proving that the properties had been overvalued. While an appeal was taken from the Board's order to the circuit court and the Court of Appeals, there was no review of the Board's order on the merits. The appellate rulings dealt with a procedural issue concerning the taking of the appeal to the circuit court.

In its prior Order No. K-22982, the Board ruled that the appraiser's reports for the properties lacked probative value. Each tax year stands on its own and for the subsequent years in question, this taxpayer presented a different appraiser at the hearing, Roger Thornton, MAI, and his appraisal report in support of its claim of valuation for the years in question. While the PVA's estimate of fair cash value is entitled to a presumption of validity, as it was in 2011 and 2012, this time, the taxpayer overcame that presumption of validity with sufficient evidence to establish that the property has been overvalued for the years in question. The PVA did not present any additional appraisal evidence of his own to rebut the taxpayer's appraisals. He merely presented a Marshall and Swift cost approach calculation for the improved property, which he had used to make sure he "was in line," but which he admitted on cross-examination had flaws. (Defendant's Ex. 6; TR 3:29; 3:58-4:00)

The appraiser described the one-acre lot as a "ravine" and in order for it to be developed, he estimated it would cost \$300,000 to cut and fill in the area. (TR 1:41) He

reviewed comparable sales of approximately one acre lots in the surrounding region and after deducting the amount necessary to fill in the lot, he opined that the lot was only worth \$120,000. (TR 1:33-1:42) The Board finds that the taxpayer has met its burden of proof concerning the value of the one acre lot. The appraiser presented a thorough analysis of the seven land sales that he used and the adjustments that he made to those sales (pages 55-66 of appraisal report) and he reasonably obtained an estimated cost of filling in the property, so that it could be developed.

The appraiser presented an equally thorough appraisal report and testimony for the supercenter store and he opined its value was \$9.3 million for each year. The original big box Walmart store was constructed in 1993. In 2007, the taxpayer began construction to add 90,000 square feet to make the store a supercenter. The appraiser stated in his report that he had looked for buildings that were single occupant retail; over 50,000 square feet; in the Cincinnati region; and, that had been built after 1990. Because there were few of these sales, he appropriately broadened the scope of his region beyond Cincinnati. While counsel for the PVA noted on cross-examination that only one of the sales was from Campbell County and that several of the sales had occurred prior to 2011, the appraiser made appropriate adjustments to the sales for size, age and condition and location (Appraiser's report pages 67-85; TR 1:49-2:00) The Board finds that the taxpayer has met its burden of proof concerning the value of the improved property. The appraiser presented a thorough analysis of the improved comparable sales that he used. While the appraiser also conducted an income approach analysis, he testified that he placed primary reliance upon his sales approach and so does this Board. Finally, the appraiser presented a report which indicated that there was no change between the 2013 and 2014 assessment dates and the Board agrees with this analysis as well. (Appellant's Ex. 4, TR 1:30)

The PVA testified that this property would be reviewed during the next tax year,

2015, for its quadrennial reassessment. (TR 4:04). While each year stands on its own, because this Board has ruled that the PVA's assessment was incorrect for 2013 and 2014, when the PVA reassesses the property in the subsequent year, he will need to be prepared to show a material change in either the property or conditions in the market in order to establish another valuation. See Carr v. Continental General Tire, 168 S.W.3d 411 (Ky. App. 2004).

The Board finds that the fair cash value of the improved supercenter property for tax years 2013 and 2014 is \$9.3 million each year. The Board finds that the fair cash value of the one acre lot for tax years 2013 and 2014 is \$120,000 each year.

### **FINAL ORDER**

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. The Board of Tax Appeals statute, KRS 131.370 (1), provides that for any final orders entered by the Board on the rulings of a county board of assessment appeals, the Circuit Court of venue is the Circuit Court of the county in which the appeal originated. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or
- (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER**  
**AND MAILING: February 4, 2015**

**KENTUCKY BOARD OF TAX APPEALS**  
**FULL BOARD CONCURRING**

**Cecil Dunn**  
**Chair**